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Federal and state laws hold election officials and voters accountable for their actions and provide procedures for enforcing accountability. This chapter provides information on how to report violations or complaints of alleged misconduct, procedures for responding to voter complaints, and categories of election related criminal offenses.

### **23.1      How to Handle a Violation or Complaint: Gather Facts to Evaluate Severity and Determine Appropriate Response**

One of the most important responsibilities of state and local election officials is responding to complaints alleging illegal conduct and violations of civil rights. States have primary responsibility and local election officials are the front line of enforcement to protect voting rights and prevent fraud. [US Const. Art. I](#). The first step in an effective response is gathering the facts necessary to evaluate the severity of the violation and the options for response. The Incident Report Form discussed in Chapter 27 provides a good tool for gathering facts. Facts indicating a willful violation should be referred for further investigation for possible prosecution to the local Commonwealth's Attorney, or United States Attorney if federally related. Election officials should report willful misconduct they observe or discover and refer third-party complaints to the appropriate prosecutor(s) for action. The Federal Bureau of Investigation (FBI) invites complaints concerning [civil rights violations](#) and [election crimes](#).

Questions regarding state offenses and suspected violations of state law should be directed to the [Commonwealth's Attorney](#) in the locality in which the incident allegedly occurred. [§ 24.2-1019](#).<sup>1</sup> A Commonwealth's Attorney or any member of an Electoral Board may request the Attorney General to investigate substantial election law violations. [§ 24.2-104](#).

Questions regarding federal offenses and suspected violations of federal law should be directed to the appropriate United States Attorney for the geographic area ([Eastern](#) or [Western](#) District) or to the United States [Department of Justice Voting Rights Section](#).

Reporting an alleged violation to the appropriate law enforcement authorities does not require that an official have facts establishing a violation. However, there should be some objective and verifiable basis for any report that might result in an arrest, indictment, or serve as the basis for a contest or other action disputing an election. Normally, the person witnessing an alleged violation should be the person who reports it. However, in many cases concerning Election Day violations at the polls, the Registrar or Electoral Board will report the violation based on statements from an Officer of Election who witnessed the incident. In either case, the Officer of Election or other person who saw the alleged violation should be prepared to document the specifics regarding the incident and testify in court if needed.

It is important to read the statutory language as to each situation presented before presenting a complaint to the Commonwealth's Attorney, the FBI, or the U.S. Attorney. Local election officials may also want to review the facts with their County or City Attorney before proceeding with the complaint. This process will help local election officials determine what information may need to be gathered before contacting the Commonwealth's Attorney or the U.S. Attorney, as well as provide guidance on the best way to proceed.

Both federal and state laws may prohibit the same conduct. For example, federal and state laws generally prohibit voting more than once in the same election. [§ 24.2-1004](#), [42 USC 1973i\(e\)](#). The appropriate law enforcement authorities will determine whether the facts reported by an election official, private individual, or group warrant prosecution.

SBE may not give legal advice, comment or disclose information about possible prosecutions of election law offenses. [§ 2.2-3706](#). SBE refers suspected violations to the appropriate Commonwealth's Attorney and may request assistance from the Attorney General if SBE determines that the public interest will be served. [§§ 24.2-104](#), [24.2-1019](#).

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<sup>1</sup> Violations involving alleged false statements on applications are deemed to occur in the locality where the applicant *sought to be registered*. [§ 24.2-1019](#).

## **23.2 Complaints**

Virginia's HAVA State Plan details standards for handling complaints consistent with HAVA requirements. *See*, [HAVA State Plan](#), page 20. HAVA requires complaints be resolved within 90 days or referral to alternative dispute resolution. [42 USC 15512](#). To implement this and related HAVA requirements the SBE has formulated a policy which outlines the basic process for handling complaints. *See*, State Board Policy 2004-001 (restated in [1 VAC 20-20-80](#)).

### **23.2.1 Informal Complaints**

Conflict resolution should begin at the local level. Each jurisdiction should have procedures in place to handle conflicts and complaints. While SBE encourages voters to file informal complaints by calling their toll-free number or contacting them online, ideally this will only occur after the GR or EB members have first been given an opportunity to resolve the conflict at the local level.

Informal complaints filed with SBE are assigned to the appropriate staff member for resolution as expeditiously as possible. A form is available on the SBE website that enables a complaint to be filed online. Complaints filed online, by e-mail, or received by phone will immediately be sent to the appropriate GR/EB. Often a call to the GR is all that is needed to clear up a misunderstanding. If the complaint cannot be immediately resolved, the GR/EB should investigate and respond as quickly as possible. The response should be provided to both the voter and the SBE staff member who was assigned to the complaint.

Sometimes complaints allege facts indicating a criminal violation. Such complainants should be referred to the local Commonwealth's Attorney, and/or the US Attorney if federal law is involved. Election officials also have a responsibility to *independently* report allegations of serious offenses to ensure that appropriate enforcement action is taken.

### **23.2.2 Formal Complaints**

Virginia has also adopted a formal grievance procedure for Election Day complaints, as required by HAVA. [42 USC 15512](#). This procedure has been implemented through SBE policy directives. *See*, State Board Policy 2004-001 (restated in [1 VAC 20-20-80](#)). The SBE has also made available, at the polls on election day and on the SBE website, the Virginia Voters' Election Day Complaint Form. Virginia's procedure requires that a formal complaint must be notarized and sent to the SBE within 10 days after the incident occurred. Virginia's published instructions provide that the Deputy Secretary will resolve formal complaints within 15 days of receipt and inform the complainant of her right to request alternative dispute resolution within 10 days of the Deputy decision. The ADR specialist has 30 days to render a decision; a hearing before the full Board may be

requested within 10 days after the ADR specialist decision. Normally the GR or EB will be contacted for information concerning the complaint and will be allowed an opportunity to review the proposed response. HAVA sets an outside time limit requiring that all grievances submitted to SBE be resolved within 90 days. The formal complaint instructions provide the following steps.

First Level of Resolution: The Deputy Secretary of the State Board of Elections

The Deputy Secretary of SBE has 15 days from the receipt of a complaint to review and respond using the following process:

- Determine if the complaint is valid and resolve it.
- If the complaint is not valid, the Deputy Secretary will list the reasons for this decision and inform the person in writing of their right to use Alternative Dispute Resolution (ADR).
- If there are several complaints, the Deputy Secretary may determine that the complaints can be resolved with a policy change. In that case, the person will receive written notice of the steps taken to resolve the issue.
- If the person is dissatisfied with the Deputy Secretary's decision, he/she has 10 days from the date of the decision to appeal and use the second resolution level (ADR).

Second Level of Resolution: Alternative Dispute Resolution (ADR)

An ADR Specialist has 30 days to schedule a meeting to assist all parties involved to determine a solution. If the recommended solution does not satisfy everyone involved, the parties have 10 days to request a hearing before the full State Board of Elections.

Third Level of Resolution: Hearing before the State Board of Elections

If a meeting of the Board is not scheduled within 30 days, the Board will request additional time to hear the case. If that is not agreeable, the Board will hold a special meeting. At the hearing, all parties will have the opportunity to present their case before the Board. The Board will determine, by majority vote, if there has been a violation of any provision of the voting rights. The Board will notify each complainant, in writing, of the disposition of the complaint.

All complaints settled before the Board will be explained in full detail on the State Board of Elections' website and in the meeting minutes.

### **23.2.3 Election Related Criminal Offenses**

Election offenses may violate state laws, federal laws, or both. Offenses involving conspiracy to deny voting rights, fraud, and willful misstatements are felonies punishable by more than a year in prison and large fines. Less serious offenses involving disruptive conduct and disobedience are misdemeanors punishable by up to 12 months in jail and smaller fines. Campaign finance-related violations are often viewed as civil rather than criminal offenses. However, serious campaign finance offenses can be felonies. Any

election offense that is found to be willful is elevated in seriousness and generally receives a higher penalty.

Election offenses fall into three broad categories: official misconduct, fraud or interference with the registration or election process, and campaign and campaign finance-related violations. In filing charges, prosecutors may consider the fact that actions may have violated multiple election laws. Relevant federal and state law provisions in each area are summarized in the tables below

### 23.2.4 Official Misconduct<sup>2</sup>

Unlawful acts of misconduct and wrongdoing in the performance of official duties in administering elections are known as malfeasance. This official misconduct is subject to both civil penalties and criminal prosecution.

<b>Nature of Offense</b>	<b>Penalty</b>	<b>Statute</b>	<b>Procedure</b>
Willful neglect of official duty	Misdemeanor	§ 24.2-1001	Report to SBE and CA
Corrupt conduct in executing duties.	Felony	§ 24.2-1001	Report to SBE and CA
Failure to timely respond to AB ballot application (through willful neglect with malicious intent)	Misdemeanor	§ 24.2-706 § 24.2-1001	Report to SBE and CA
Impede UOCAVA voter	Felony	18 USC 608	Report to SBE and AUSA
Aid illegal absentee voting	Felony	§ 24.2-1012	Report to SBE and CA
Refuse to allow or count vote as part of a conspiracy	Felony	42 USC 1973i(a), 1973(j)	Report to SBE and AUSA
Intimidate, threaten or coerce persons attempting to vote or federal enforcement officials	Felony	42 USC 1973i(c)	Report to SBE and AUSA
Interfere with federal nominations or elections	Misdemeanor	18 USC 595	Report to AUSA
Violate civil rights	Civil	42 USC 1983	Report to chief legal officer

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<sup>2</sup> Acronyms used are as follows: SBE is the State Board of Elections, CA is the Commonwealth's Attorney, and AUSA is the Assistant U.S. Attorney.

Conceal or misrepresent facts	Felony	18 USC 1001	Report to SBE and AUSA
Misuse public assets	Felony	§ 18.2-112.1	Report to SBE and CA
False official certification	Felony	§ 24.2-1016	Report to SBE and CA
False claims for federal funds	Felony	31 USC 3729	Report to SBE and AUSA
Misuse of public assets	Felony	§ 18,2-112.1	Report to SBE and CA
False pretenses to obtain funds, and forging public records	Felony	§§ 18.2-168, 18.2-178	Report to SBE and CA
False claims for state funds	Civil damages	§ 8.01-216.1 et seq.	Report to SBE and OAG
Misprision of felony (concealment or non-disclosure of someone else's felony)	Felony	§ 18.2-462, 18 USC 4	Report to SBE, CA and AUSA

To access the Code of Virginia, click [here](#) and enter the code section.

To access United States Code sections, click [here](#) and enter the title and section number.

## 23.2.5 Offenses Related to Voter Registration and Voting

Election laws provide very strict guidelines on acceptable voter registration and election activities. Offenses can range in seriousness from a misdemeanor for failing to provide a voter registration receipt, to a felony for conspiracy to deny voting rights. Conduct constituting the latter offense must be reported to the local Commonwealth's Attorney or United States Attorney. [§ 24.2-1016](#); [18 USC 241](#).

### 23.2.5.1 Offenses Related to Voter Registration

Nature of offense	Penalty	Statute	Procedure
Duplicate registration	Felony	§ 24.2-1004 (C)	Report/refer to CA
Willful false material information or alteration	Felony	§§ 24.2-1009, 24.2-1002.01, 24.2-1016; 42 USC 1973i(c)	Report/refer to CA and AUSA
Solicit multiple registration	Felony	§ 24.2-1002 § 24.2-1004 (C)	Report/refer to CA
Registration by noncitizen	Felony	18 USC 1015(f), 3571	Report/refer to AUSA
Interference by force or threats	Misdemeanor	§ 24.2-1002	Report/Refer to CA

Failure to mail or deliver application on time	Misdemeanor	§ 24.2-1002.01	Report/Refer to CA
Failure to provide required application receipt (private drives)	Misdemeanor	§§ 24.2-418.1, 24.2-1017	Report/Refer to CA
Campaigning at officially sponsored voter registration	Misdemeanor	§ 24.2-1003	Report/Refer to CA
Unauthorized collection and disclosure of applicant SSNs or other personal information	Felony	§§ 18.2-186.3, 24.2-1002.1	Report/Refer to CA
Incentives to register to vote	Felony	42 USC 1973i(c)	Report/refer to AUSA

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### 23.2.5.2 Offenses Related to Voting

<b>Nature of Offense</b>	<b>Penalty</b>	<b>Statute</b>	<b>Procedure</b>
Illegal voting (example: voting twice or while knowingly not qualified)	Felony	§ 24.2-1004(B), 42 USC 1973i(e)	Report to CA and AUSA if federal election
Aid or encourage illegal voting	Felony	§ 24.2-1004(B), (C)	Report to CA
Bribe, interfere, insult, or abuse Officer of Election	Felony	§§ 24.2-607, 24.2-1000	Report to CA
Noncitizen voting in election for federal office	Felony	18 USC 611	Report to AUSA
Interfere with voting or party nominating process	Misdemeanor	§ 24.2-1005 18 USC 594	Report to CA and AUSA if federal election
Give false directions/information to voter	Misdemeanor	§ 24.2-1005.1	Report to CA
Hinder, intimidate or interfere with qualified voter secret ballot, or disrupt orderly conduct of election	Misdemeanor	§§ 24.2-604(D), 24.2-607	Officers of election may order immediate arrest and 24-hour confinement
Influences or induces someone to vote contrary to his desire, using means of deception or coercion in an attempt to deceive	Misdemeanor	§ 24.2-1005	Report/refer to CA

<b>Nature of Offense</b>	<b>Penalty</b>	<b>Statute</b>	<b>Procedure</b>
Hinder or delay access or exit from polls	Misdemeanor	§ 24.2-604	Report/refer to CA
Campaign or influence within prohibited area <sup>3</sup>	Misdemeanor	§§ 24.2-604, 24.2-1006	Request stop and report to CA
Unauthorized use of loudspeaker within 300 feet of polling place on Election Day	Misdemeanor	§ 24.2-605	Report to CA
Interfere or coerce AB voter	Felony	§ 24.2-1012	Report to CA
Change vote against voter intent	Misdemeanor	§ 24.2-1005	Report to CA
Improper assistance to voter with physical disability or inability to read or write	Misdemeanor or felony	§ 24.2-649 (B)	Report to CA
Incentives to vote in federal elections	Felony	42 USC 1973i(c)	Report to AUSA
Buying/selling votes (state and local elections)	Misdemeanor	§ 24.2-1007	Report/refer to CA
Carry away own ballot	Misdemeanor	§ 24.2-1011	Report/refer to CA
Counterfeiting or tampering with ballots, software, equipment, keys	Felony	§§ 24.2-1008, 24.2-1009, 24.2-1010	Report/refer to CA
Vote unauthorized ballot not provided by Officer of Election	Misdemeanor	§ 24.2-1011	Report to CA
Wrongfully deposit a ballot or cast a vote on voting equipment	Misdemeanor	§ 24.2-1004(A)	Report to CA
Unauthorized possession of voting equipment key or activation device	Misdemeanor	§ 24.2-1010	Report to CA
Intentionally cast, or assist another in casting, an illegal vote	Felony	§ 24.2-1004(B)	Report to CA

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Facilitating voting: benefits that help people vote like a postage stamp for an absentee ballot or a ride to the polls are not considered violations of federal law, according to the FBI.

<sup>3</sup> Legislation enacted in 2009 and 2010 excludes items worn by voters, but not candidates or representatives, from this prohibition.



- ① Loitering within the prohibited area is probably the most frequent source of complaints. Immediate arrests for violations of this law are uncommon. Typically, violators are overeager campaign volunteers or candidates with a tendency to forget where the 40-foot boundary is or the limits of the provision for candidate voting and 10-minute visits. . Usually, officers of election warn such violators before taking legal action. If a violator repeatedly refuses to heed such a warning, then arrest may be warranted. Suggestion: Officers of election may show the violator the specific wording of [§ 24.2-604](#), or they may point out the language of this Code section on the “Prohibited Area” signs that they post outside the polling place.
- ① Offenses relating to assisting voters: Any voter who needs assistance in preparing his ballot because of a physical disability or inability to read or write (including those with limited English proficiency) can request such assistance. The assistant (who can be an officer of election) must cast the ballot for the voter according to the direction of that voter. The assistant cannot in any way influence the decision of the voter. (If the voter is not capable of *understanding* what he is doing, and cannot *direct* how his vote is cast, the matter should be referred to the Commonwealth's Attorney for possible prosecution of the person rendering improper assistance, whether or not an assistance form was completed. For example, it is not legal for voters residing in nursing homes, or suffering from long-term mentally debilitating illnesses, to "be voted" by a family member or staff. Even if the assistant says, "I know how he/she would want to vote," if the voter could not actually *direct* how his/her vote was cast, improper assistance has been rendered and the matter must be referred to the Commonwealth's Attorney). Finally, the assistant cannot divulge how the person voted. Violation of any of these laws related to assistance is punishable as a Class 1 misdemeanor, and may be a Class 5 felony if related to absentee voting or fraudulent. [§ 24.2-649\(D\)](#).

## **23.2.6 Campaign Related Offenses: Reporting and Advertising**

### **23.2.6.1 Virginia**

Virginia does not prohibit any properly reported contribution, except certain contributions received during the regular legislative sessions. [§ 24.2-954](#). Virginia campaign finance laws provide both civil penalties and criminal prosecution. Willful campaign finance and advertising related violations are typically prosecuted as misdemeanors. [§§ 24.2-953](#), [24.2-955.3](#). However, filing a willfully false material statement constitutes the crime of election fraud and is punishable as a Class 5 felony. [§ 24.2-1016](#).

The local Electoral Board and the State Board of Elections may impose civil penalties for deficiencies in filing campaign contributions reports. [§§ 24.2-946.3, 24.2-953, 24.2-955.3](#). No election official or staff member may waive civil penalties. A request for waiver must be presented to the appropriate board assessing the penalty. [§ 24.2-946.3](#). Extensions may be granted in special circumstances as provided in [§ 24.2-946.4](#).

Commonwealth's Attorneys are responsible for enforcing collection of unpaid civil penalties and prosecuting criminal violations. [§§ 24.2-946.3, 24.2-955.3, 24.2-1019](#). However, the local Commonwealth's Attorney, SBE, or the local Electoral Board may request assistance from the Attorney General. [§§ 24.2-104](#). The State Board and its staff, local election officials, or the public may report an alleged violation of any provision of Title 24.2 to the Commonwealth's Attorney. [§24.2-1019](#).

Local election officials often receive complaints regarding issues outside the scope of their authority. Enforcement of ordinances governing issues, such as the placement of campaign signs, are the responsibility of the local government. [§ 15.2-109](#). All complaints received should be referred to the city or county attorney or administrator. See GREB 21 (discussing disclaimers). Complaints about campaign telephone calls to solicit or convey information for participating candidates or political parties are also not within the scope of the authority of the local election official. Political calls are not covered by the federal or state "Do Not Call" laws and lists. Voters may ask political parties and committees voluntarily to remove the voter's information from their contact lists. Disclaimers are not required for telephone surveys that do not meet any of the definitions under [§ 24.2-955.1](#).

<b>Nature of Offense</b>	<b>Penalty</b>	<b>Statute</b>	<b>Procedure*</b>
Failure to file a campaign finance report, filing an incomplete or late report	Misdemeanor if willful and/or civil penalties ranging from \$100 to \$1,000	§ 24.2-953 et seq.	GR/EB assess local; SBE assess state; Mandatory report to CA
Failure to correct an incomplete campaign finance report after 10 days notice or any extension allowed up to 2 weeks granted for good cause	Civil penalty of \$500	§ 24.2-955.3	GR/EB assess local; SBE assess state; Mandatory report to CA
Material false statement	Felony	§ 24.2-1016	Report to CA
Sponsor omit disclaimer required in media (e.g. print, TV, radio, telephone)	Misdemeanor if willful. Civil penalties increase closer to election from \$1,000 to \$2,500	§ 24.2-955.3	Report suspected willful violation to CA and assess civil penalties
Sponsor omit disclaimer required for campaign	Misdemeanor if willful or \$2,500	§§ 24.2-959, 24.2-959.1	Report suspected

telephone call	civil penalty		willful violation to CA and assess civil penalties
Publisher omit required notice "paid advertisement"	Misdemeanor if willful or \$50 civil penalty.	§ 24.2-955.2	Report suspected willful violation to CA and assess civil penalties
Post sign within highway limits	\$100 civil penalty plus removal costs	§ 33.1-373	Report to VDOT
Post sign next to right-of-way	<a href="#">VDOT regulations</a>	§ 33.1-351 et seq.	Report to VDOT
State legislator receive contribution during session	Civil penalty	§ 24.2-954	Report to CA
Bribery of officials	Felony	§§ 18.2-438, -439, -447	Report to CA
Contributions from aliens	Felony	2 USC 441e	Report to AUSA

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\*Collection of civil penalties is subject to statute of limitations that expires the earlier of 1 year after discovery or 3 years after violation. Va. Code 19.2-8.

### 23.2.6.1 Federal

Federal regulation of campaign finance and advertising is more complex, with enforcement responsibility shared by the Federal Election Commission (for civil violations) and the US Department of Justice (for criminal violations). Public communications urging people to support or oppose federal candidates must have disclaimers. The Federal Election Campaign Act (FECA), [2 USC 431-455](#), provides civil and criminal penalties for all violations of the FECA, including making excessive or prohibited contributions. Any violation of the FECA can be punished by a civil penalty. To constitute a crime, a violation must be "knowing and willful," which requires the individual to understand the law and nonetheless undertake the prohibited conduct willfully.

Investigations by the FEC can be initiated by a citizen's complaint or by the FEC itself. Under [2 USC 437g](#), the FEC may undertake a confidential investigation resulting in dismissal of the complaint if no violation is found. If the FEC finds probable cause to believe that a violation has been committed then they may attempt to negotiate a

conciliation agreement. Civil penalties that may be imposed in the conciliation process range from \$5,000 to 300% of the amount involved. If the FEC believes that a violation has occurred, but the party disagrees and declines to enter a conciliation agreement, the FEC can bring a civil enforcement action in federal court. In the event of criminal prosecution by the Attorney General a civil conciliation agreement with the FEC can be cited as evidence of lack of knowledge of the law or intent to violate it. [2 USC 437g\(d\)\(2\)](#). The agreement will also be considered by the court when deciding the seriousness of the violation and the appropriateness of the punishment being proposed. [2 USC 437g\(d\)\(3\)](#).

The FEC's civil enforcement procedure is not a bar to direct criminal prosecution by the Attorney General. [United States v. Orkin Exterminating Co., 688 F. Supp. 223 \(W.D.Va. 1988\)](#). The FEC may also refer a matter to the Attorney General on finding probable cause of a knowing and willful violation. [2 USC 437g\(a\)\(5\)\(C\)](#) and [437g\(c\)](#). An affirmative vote of 4 members of the FEC (there are 6 commissioners) is required to take actions under the civil enforcement procedure. Questions regarding federal offenses or suspected violations of federal law should be directed to the appropriate United States Attorney for the geographic area (Eastern or Western District) or to the United States Department of Justice Voting Rights Section.